

Appl. No. 10/635,249
Docket No. 8556C
Amdt. dated January 9, 2008
Reply to Office Action mailed on March 28, 2008
Customer No. 27752

REMARKS

Claim Status

Claims 12-14 and 16-20 are pending in the present application. No claims are amended herein. The enclosed claim listing is provided for the Examiner's convenience. No additional claims fee is believed to be due.

Allowable Subject Matter

Claims 12-14 and 16 are allowed.

Rejection Under 35 U.S.C. § 103

In the Office Action, claims 17-20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,236,428 to Zajackowski (hereinafter "Zajackowski") in view of U.S. Patent No. 5,681,298 to Brunner et al. (hereinafter "Brunner").

I. Combination Fails to Teach or Suggest all Claim Limitations

In order to establish a prima facie case of obviousness, the prior art reference (or references when combined) must teach or suggest all the claim limitations. (*See* MPEP § 2143). There is at least one aspect of the invention defined by the pending claims not taught or suggested by the combination of Zajackowski and Brunner.

A. Impermeable Layer of Claim 17

Claim 17 recites an impermeable layer partially wrapped around the permeable layer such that longitudinal edges of the impermeable layer stop short of meeting, leaving a center portion of the body facing surface of the permeable layer exposed. (emphasis added). The combination of Zajackowski and Brunner do not teach or suggest the impermeable layer recited in claim 17. Zajackowski discloses an absorbent article having a primary absorbent member 12 and an auxiliary absorbent member 14, which includes a topsheet 44 positioned on top of an auxiliary absorbent means 42. (*See* Col. 2, ll. 59-61; Col. 4, ll. 52-56; and Fig. 1). Zajackowski also discloses that the auxiliary absorbent member 14 includes a lower surface 28, which in Figure 1 is illustrated as

FIG. 1

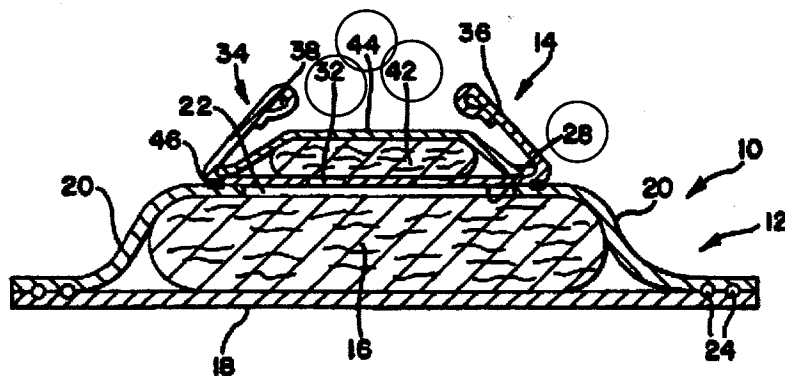


FIG.2

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In support of the rejection of claim 17, the Office Action incorrectly characterizes the lower surface 28 of Zajaczkowski as the impermeable layer recited in claim 17. (emphasis added). In contrast to the characterization of the Office Action, Zajaczkowski discloses that lower surface 28 is permeable. For instance, Zajaczkowski discloses that the lower surface 28 contains a liquid-permeable region 30 which in a particular embodiment comprises a plurality of holes 32 provided in the otherwise liquid-impermeable lower surface 28. (See Col. 3, ll. 62-66). In another embodiment, Zajaczkowski discloses a lower surface 128 having a central opening to define a liquid-permeable region 130. (See Col. 5, ll. 22-25). In yet another embodiment, Zajaczkowski discloses a liquid-permeable region 230 comprising a liquid-permeable fibrous sheet. (See Col. 5, ll. 40-42). As such, Zajaczkowski does not teach or suggest the impermeable layer of claim 17.

B. Temperature Change Substance Disposed on the Body-Facing Surface of the Permeable Layer of Claim 18

In addition to elements recited in independent claim 17, dependent claim 18 recites additional structural features that distinguishes claim 18 over the cited references. In particular, claim 18 recites that the temperature change substance is disposed on the body-facing surface of the permeable layer in parallel regions covered by the longitudinal edges of the impermeable layer. (emphasis added).

In support of the rejection of claim 18, the Office Action states: “Brunner teaches a temperature change substance (84) on a body-faceable surface of the permeable layer (58) in parallel regions (142, 143) covered by the longitudinal edges (36) of the impermeable layer (28)(see figure 8, *infra*)” and “regarding the ‘body facing surface of the permeable layer,’ this layer is capable of being positioned such that either flat surface can face a human body.” (See Office Action, page 5). It is respectfully submitted that the Office Action’s assertions made with regard to claim 18 are in error.

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First, Applicants would like to again emphasize that claim 18 recites a body-facing surface of the permeable layer, as opposed to the body faceable surface referred to in the Office Action. (emphasis added).

Next, the Office Action's assertion with regard to claim 18 refers to teachings from Zajaczkowski (i.e. reference numbers identified as regions (142, 143); edges 36; and layer (28)) as being attributable to Brunner. In so doing, the Office Action neglects to provide any reasoning as to how or why the aforementioned elements would be obvious to combine in the manner recited in claim 18.

Further, if the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. (See MPEP 2143.01(VI)). As is clear from the disclosures of the cited references, in order for the outer facing surface of the topsheet 44 of Zajaczkowski (or liner 58 of Brunner) to face the wearer as the Office Action proposes, the absorbent articles of Zajaczkowski and Brunner would have to be worn inside out. Such a modification, would in turn, change the principle of operation of the absorbent articles of Zajaczkowski and Brunner.

Thus, the combination of Zajaczkowski and Brunner does not teach or suggest a temperature change substance disposed on the body-facing surface of the permeable layer in parallel regions covered by the longitudinal edges of the impermeable layer as recited in claim 18. (emphasis added).

C. Temperature Change Elements Disposed on Barrier Leg Cuffs of Claim 19

Claim 19 recites that the temperature change elements are disposed on the barrier leg cuffs. In support of the rejection of claim 19, the Office Action incorrectly characterizes reference numbers 28 and 30 of Zajaczkowski as leg cuffs. In particular, the Office Action refers to elements identified by reference numbers 42, 142, and 143 in Zajaczkowski as being disposed on barrier leg cuffs 28, 30. As discussed above, Zajaczkowski identifies reference number 28 of as a lower surface 28 of auxiliary

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absorbent member 14, and identifies reference number 36 as a substantially liquid-impermeable flap. (See Col. 3, ll. 58-66; and Col. 4, ll. 11).

In contrast to the Office Action's assertion, Zajackowski identifies reference number 42 as an auxiliary absorbent element and identifies reference numbers 142 and 143 as separate absorbent elements which are longitudinally spaced to each other. (See Col. 4, ll. 35; Col. 5, ll. 15-20; and Figs. 2 and 3).

See Figure 2 of Zajackowski reproduced above, and Figures 3 and 4 of Zajackowski reproduced below with reference numbers of particular interest being circled.

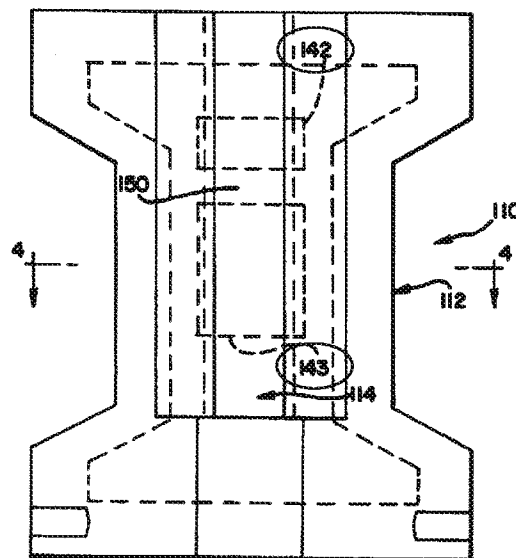


FIG.3

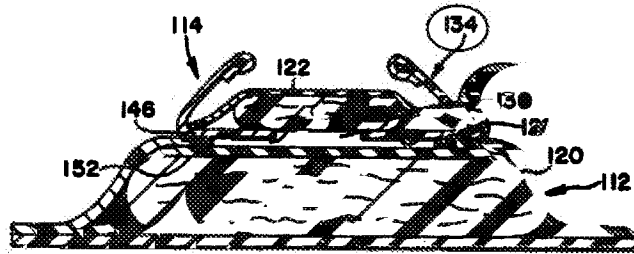


FIG. 4

Zajaczkowski also identifies reference numbers 34 and 134 as standing leg gathers. (See Col. 4, ll. 19-26; Col. 5, ll. 27-31; and Figs. 2 and 4). As shown, the absorbent elements 42, 142, and 143 are disposed between the topsheet 44 and the lower surface 28. In addition, the absorbent elements 42, 142, and 143 are disposed underneath the topsheet 44 and spaced below the leg gathers 34 and 134. As such, Zajaczkowski does not teach or suggest the absorbent elements 42, 142, and 143 as being disposed on the leg gathers 34, 134.

D. Temperature Change Substance Disposed Between Permeable Layer and the Barrier Leg Cuff of Claim 20

With regard to claim 20, the Office Action, while referring to Figure 2 of Zajaczkowski, asserts that Zajaczkowski teaches a temperature change substance 42 disposed between the permeable layer 44 and the leg barrier cuff (28, 36). The Office Action's assertion and characterization of Zajaczkowski is incorrect. As discussed above, Zajaczkowski identifies reference number 28 as the lower surface, and identifies reference number 36 as a substantially liquid-impermeable flap. (See Col. 3, ll. 58-66; and Col. 4, ll. 11). As shown in Figure 2 of Zajaczkowski (reproduced above), the auxiliary absorbent pad 42 is disposed between the topsheet layer 44 and the lower surface 28, and is not disposed between the substantially liquid-impermeable flap 34 and the topsheet layer 44. (emphasis added).

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II. Improper Combination of Zajackowski and Brunner

In support of the claim rejections, the Office Action merely asserts, while providing no analysis, that all the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions. (emphasis added). A patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art. (See *KSR International v. Teleflex Inc.*, 127 S.Ct. 1727, 1741 (2007)). It can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does. *Id.* To determine whether there was an apparent reason to combine the known elements in the way a patent claims, it will often be necessary to look to interrelated teachings of multiple patents; to the effects of demands known to the design community or present in the marketplace; and to the background knowledge possessed by a person having ordinary skill in the art. *Id.* at 1740. To facilitate review, this analysis should be made explicit. *Id.* (emphasis added).

The Office Action has not provided an explicit analysis as to the apparent reason to combine known elements in the way recited in pending claims. (emphasis added). As disclosed in the present application, the temperature change element of the absorbent article provides a cool/wet signal when wetted which causes discomfort to the wearer. (See *inter alia* Abstract). The temperature change element comprises a temperature change substance disposed on an impermeable material in order to maximize the thermal signal provided to the skin of the wearer. (emphasis added). (See *inter alia* Abstract). The structure recited in the claims achieves the aforementioned function. However, the Office Action provides no analysis as to how or why it would be obvious to modify the functions and structures of the cited references and combine them in the same manner as recited in claims 17 and 19. Instead, the Office Action makes, without more, a conclusory statement that it would have been obvious to place the temperature member of Brunner under the topsheet of the diaper of Zajackowski without addressing why it

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would have been obvious to combine elements of the cited references in the manner in claimed. (emphasis added).


As previously mentioned, the Office Action attempts to combine the auxiliary absorbent means 42 of Zajackowski with the temperature change member 22 of Brunner with to create the temperature change substance recited in claims 17 and 19. The function of the auxiliary absorbent means of Zajackowski is to increase absorbent capacity. (See Col. 1, ll. 14-20). In contrast to the temperature change substance recited in the pending claims, the auxiliary absorbent means of Zajackowski would function to absorb and move urine away from a wearer, as opposed to maximizing a thermal signal provided to the skin of the wearer when wetted. As such, it is submitted that it would not have been obvious (and the Office Action has provided no reasoning or motivation along with an explicit analysis) to modify the function and structure of the absorbent means of Zajackowski with the temperature change member of Brunner to be the same as the temperature change substance as recited in claims 17 and 19.

III. Conclusion

Thus, for at least the reasons discussed above, it is believed that claims 17-20 are patentable under 35 U.S.C. § 103(a) over Zajackowski in combination with Brunner. In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejections of the claims. Early and favorable action in this case is respectfully requested.

Respectfully submitted,

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